

**LEGAL AGREEMENT BETWEEN
THE KENTUCKY AGRICULTURAL DEVELOPMENT BOARD
AND**

**THE LIVINGSTON COUNTY BOARD OF EDUCATION
FOR THE 2020 SHARED-USE EQUIPMENT PROGRAM
A2020-0273**

**BACKGROUND
RECITALS**

1. The **Kentucky Agricultural Development Board** (the "Board") was created by the General Assembly, pursuant to KRS 248.707, and charged with the responsibility of administering funds from the "Rural Development Fund," established in KRS 248.655, to provide economic assistance to the agriculture community of the Commonwealth.
2. The Board, pursuant to its statutory mandate of receiving requests via Applications for funding and subsequently authorizing the distribution of said funds, pursuant to KRS 248.709(2), desires to enter into a Legal Agreement with the **Livingston County Board of Education** (the "Recipient") in furtherance of said goals and objectives.
3. The Recipient has submitted an Application (A2020-0273) which after full review and consideration during the **November 20, 2020** Board meeting, the Board has approved said Application and now the Board and the Recipient (the "Parties") seek to enter into a Legal Agreement to set forth the rights and obligations of the Parties.

Accordingly, the Parties agree to the following:

I. FUNDING

A. Amount of Funding

The Board, subject to the terms, conditions and restrictions set forth herein, agrees to provide up to the sum of TWELVE THOUSAND FIVE HUNDRED SEVENTY-FIVE DOLLARS (\$12,575) in State funds and THIRTEEN THOUSAND SIX HUNDRED DOLLARS (13,600) in Livingston County funds for a total grant of **TWENTY-SIX THOUSAND ONE HUNDRED SEVENTY-FIVE DOLLARS (\$26,175)** to the Recipient to implement a Shared-Use Equipment Program for Livingston County pursuant to the Application filed by the Recipient. Specifically, the Recipient shall use the funds to purchase a No-Till Drill (the "Equipment") for use by producers in Livingston County. Recipient shall be required to document matching funds applicable to the specific Project.

B. Use of State Funds

The Recipient agrees to abide by any general restrictions as set forth by the Commonwealth of Kentucky for the use of state funds.

C. Voidable Legal Agreement

Notwithstanding any other provision in this Legal Agreement, this Agreement shall be voidable upon the notification by the Board of its inability to fund any project for any reason. The Recipient recognizes and agrees that the Board shall not be liable for any funding

Original

commitment or any portion thereof when the Board is unable to fund said commitment for any reason.

II. TERMS AND CONDITIONS

A. Applicable Guidelines

The Recipient agrees to abide by and follow the minimum *Shared-Use Equipment Program Guidelines (2020)*, which are available at <http://agpolicy.ky.gov/funds/Pages/program-portal.aspx> and are incorporated by reference herein.

B. Maintenance of Equipment

The Recipient shall own and maintain the Equipment for at least FIVE (5) years from the Effective Date of this Legal Agreement.

C. Moratorium on Sale of Equipment

If the Recipient sells the Equipment purchased with Agricultural Development Funds prior to the end of the 5-year moratorium, the Recipient shall refund the grant amount to the Board on a pro-rated basis. If the Recipient does not refund the pro-rated grant amount, the Recipient shall not be eligible to receive additional Kentucky Agricultural Development Board funds or Kentucky Agricultural Finance Corporation funds.

D. Match Ratio

The Board shall reimburse the Recipient up to 75% of its eligible equipment expenditures.

E. Stricter Requirements

The 2020 Shared-Use Equipment Program allows for implementation of stricter requirements over and above the minimum requirements at the option of the Recipient or County Council.

F. Conflict Between Guidelines and Legal Agreement

Should a conflict exist, either real or perceived, between this Legal Agreement and the Board's Program Guidelines, said conflict shall be submitted to the Board for review. The Board shall then resolve the issue and transmit its resolution to the appropriate Parties in writing.

G. GOAP Right to Inspect

The GOAP reserves the right to inspect the Equipment itself and/or audit any and all records and documents related to the Equipment.

H. Acknowledgement of Funding Source

1. All grants are intended to further the mission of the Kentucky Agricultural Development Fund (KADF) of diversifying and modernizing Kentucky's farm economy. Therefore, the Recipient shall acknowledge in any grants awarded, publications, brochures, articles, advertising, correspondence, or promotional projects and activities that a portion of the funding for this project was provided by the Kentucky Agricultural Development Fund. Furthermore, the Recipient shall utilize where possible the KADF logo which is available for download at <http://agpolicy.ky.gov/Pages/KADF-Logo.aspx>. Copies of said publications, brochures, etc. shall be submitted in conjunction with the Recipient's reporting.

2. The Board shall provide the Recipient with KADF bumper-sticker(s). Within thirty (30) days of purchase of the Equipment, the Recipient shall affix the bumper-sticker(s) provided by the GOAP to the appropriate pieces of Equipment for the remainder of the duration of the project as defined in Section III below.

III. EFFECTIVE DATE OF LEGAL AGREEMENT

The Effective Date of this Legal Agreement shall be the date of execution by the Executive Director of the Governor's Office of Agricultural Policy (the "GOAP").

IV. DURATION OF LEGAL AGREEMENT

A. Duration

The Legal Agreement herein shall be in full force and effect for five (5) years from the effective date of this Legal Agreement as defined in Section III above.

B. Disbursement of Funds

The Recipient must disburse these funds within twelve (12) months of the effective date of this Legal Agreement as outlined in the Guidelines for the Shared-Use Equipment Program (2020).

C. Return of Unused Funds

Recipient shall return all unused funds to the Board or its duly authorized representative within thirty (30) days of termination of this Legal Agreement. Other paragraphs such as the record keeping Section shall remain in effect after said date.

V. MODIFICATION

A. Procedure for Amendment

No modification or amendment of this Legal Agreement shall be binding unless made by a written instrument executed by both parties of equal formality with this Legal Agreement. Specifically, any and all proposed changes or amendments shall be made in writing and submitted to the Board for approval.

B. Incorporation of Amendment

Upon receipt of approval said modification or amendment shall be incorporated as an Amendment to the original Legal Agreement.

VI. REQUIRED RECORDKEEPING

A. Maintenance of Business Records

The Recipient shall maintain all business records and supporting documentation for a period of at least seven (7) years from the date of the initial payment of funds to the Recipient; and

B. Business Records Defined

For purposes of this Legal Agreement business records include, but are not limited to, those documents typically required in the normal course and scope of a traditional business operation, as well as any documents required by the Board or its authorized representatives.

C. Format of Business Records

Business records may be maintained in either paper or generally recognized electronic format.

D. Substantiation of Expenditures

The business documents maintained by the Recipient shall substantiate expenditures made with funds received pursuant to this Legal Agreement.

E. Right to Inspect/Copy Business Records

Upon request by the Board, the Recipient shall permit the Board or its authorized representative(s) the right to inspect and/or copy any business records maintained by the Recipient, including, but not limited to, books, documents, papers, records, computer programs or any other evidence reflecting the project funded by the Board and memorialized by the Legal Agreement herein.

F. Subject to Open Records Law

Said business records shall be subject to public disclosure pursuant to Kentucky's Open Records Law unless exempted from disclosure by KRS 61.878 or other applicable law.

VII. REPORTS REQUIRED FROM RECIPIENT

A. Deadlines for Submittal

During the life of the project, the Recipient shall submit reports every six (6) months. Reports shall be submitted every five (5) years, unless otherwise indicated in Section IV, *Duration of Legal Agreement*.

B. Substance of Reports

1. Reports shall include the Shared-Use Equipment Semi-Annual Report (APPENDIX A), along with any other information requested by the Board or its authorized representative. Submitted reports shall include the usage of the equipment, fees received for said usage and other administrative data included in the Shared-Use Equipment Semi-Annual Report and/or Shared-Use Equipment Guidelines.
2. First Semi-Annual Report: a copy of the paid invoice and a photo of the equipment shall accompany the first Shared-Use Equipment Semi-Annual Report, along with serial number or other unique identifier.
3. The Recipient shall email the reports to: GovKYAGPolicy@ky.gov or upload to our secure FTP site at <https://go.usa.gov/xmTBP> (user ID: goap reports / password: Admin23@). Reporting forms are available on the Governor's Office of Agricultural Policy's website: http://agpolicy.ky.gov/funds/Pages/program_reporting.aspx.

C. Compliance Requirement

Failure to comply with the reporting requirements set forth in this Section may result in the denial of requests for funding in the future by the Recipient or its subsidiaries.

VIII. ASSIGNMENT

This Legal Agreement shall not be assigned to any other entity. Any attempted assignment of this Legal Agreement by the Recipient shall be void.

IX. SUB-CONTRACTS

A. Board Approval Required

1. If the Recipient wishes to enter into a sub-contract for work to be done that would normally be part of the duties and responsibilities of the Recipient, the Recipient shall not do so until it makes a request to and receives permission from the Board.
2. At the time of the request for approval, the Recipient shall provide the necessary documentation (in paper or electronic form) to aid the Board, including, but not limited to, details regarding the scope of the sub-contract and cost estimates.
3. Furthermore, failure to comply with the provisions of this paragraph may result in the Recipient being found in default and the Board may terminate this Loan Agreement pursuant to Section XV below.

B. Terms of Agreement

The sub-Agreement shall be in writing and require that the subcontractor be subject to all provisions of this Loan Agreement and shall be incorporated by reference into this Loan Agreement herein.

X. AUDIT of RECORDS

The Recipient, the contractor, as defined in KRS 45A.030(9) agrees that the Kentucky Agricultural Development Board, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the contractor and the GOAP, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order No. 11-004.

XI. COMPLIANCE WITH STATE AND FEDERAL LAWS

A. Recipient's Compliance

The Recipient submits that, to the best of its knowledge, it complies with all state and federal laws and regulations.

B. Conflict of Laws

This Legal Agreement and all sub-Agreements are governed by KRS Chapter 248. If any material portion of this Legal Agreement conflicts with said laws or regulations, such portion shall be void with the remainder of this Legal Agreement to continue in full force and effect.

C. Tax Consequences

The Recipient shall be responsible for all tax consequences, if any, that may result from the receipt of said money from the Board.

XII. CONFLICTS OF INTEREST

The Recipient agrees to avoid entering into business relationships that create a conflict of interest, either real or perceived. If Recipient can provide sufficient evidence that a conflict of interest can be overcome, the justification for approval, as well as additional oversight measures should be documented by legal counsel and submitted to the Kentucky Agricultural Development Board's Recipient Review Committee for approval as an Addendum to the Legal Agreement herein.

XIII. RELATED PARTY TRANSACTIONS

The Recipient shall seek prior approval from the Kentucky Agricultural Development Board's Recipient Review Committee for all business transactions or agreements with related parties. For purposes of this Legal Agreement related parties are defined as relatives of the Recipient's management, or arrangements with businesses or other entities in which an officer or employee of the Recipient holds a significant financial interest.

XIV. VENUE AND CHOICE OF LAW**A. Venue**

Both parties agree that venue for any legal action regarding the terms and conditions of this Legal Agreement shall be in the Franklin County Circuit Court or the United States District Court, Eastern District of Kentucky, Frankfort Division. Both parties agree that this is a material term of the Agreement and consent to said venue.

B. Choice of Law

Both parties further agree that all questions as to the execution, validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the Commonwealth of Kentucky. Recipient agrees to place the substance of this paragraph into all sub-Agreements with other entities.

XV. WAIVER OF LIABILITY

In accepting the grant funds offered and approved by the Board, the Recipient, its agents, employees, representatives, successors, and assigns, absolutely and unconditionally release and forever discharge the Commonwealth, including the members of the Board, Chief Executive Officer of the Board and all staff members of the Governor's Office of Agricultural Policy, both in their official and individual capacities, from any and all actions, claims, demands, damages, executions, judgments, liabilities, expenses, costs, attorney's fees, and suits, arising out of, in connection with, or in any manner related to the Application, this Agreement and the grant funds

disbursed to the Recipient hereunder, whether past, present or future, known or unknown, foreseen or unforeseen, existent or nonexistent, disclosed or undisclosed.

XVI. TERMINATION

The Board shall have the right to terminate this Agreement upon thirty (30) days written notice via certified mail, return receipt requested, to the Recipient. Specifically, the Board may terminate this Agreement because the Recipient is failing to perform its contractual duties, or for the convenience of the Commonwealth if the Board has determined that such action is in the best interest of the Commonwealth. This provision allows the Board to react to budgetary constraints, performance concerns, and other events.

A. Termination by Default

1. **Default Defined** – Events defining default shall include, but are not limited to:
 - a. Recipient's failure to perform the Agreement according to its terms, conditions and specifications.
 - b. Recipient's failure to diligently advance the work of the project in accordance with the terms of the Agreement and project application as evidenced by GOAP staff inspection.
 - c. The filing of a bankruptcy petition by or against the Recipient; or
 - d. Actions that endanger the health, safety or welfare of the Commonwealth or its citizens.
2. **Curing of Deficiencies** – If the Board determines that the identified default can be cured, the notice of termination shall include the specifics required to cure the deficiency and the date by which it shall be accomplished. Failure to cure the deficiencies within the time specified shall result in the Board proceeding with termination pursuant to this Section.

B. Termination for Convenience of the Commonwealth

The Board may terminate this Agreement for convenience if it determines that termination is in the Commonwealth's best interest.

C. Action Following Notice of Termination

The Recipient has thirty (30) days from receipt of the Board's notice of termination to:

1. Provide the Board with a full accounting of all funds received by the Recipient in association with Project A2020-0273 and the Agreement herein.
2. Return any unused funds to the Board or the Board's designee.
3. If the Recipient desires to negotiate a settlement, a written request must be received in the GOAP offices within the thirty (30) day timeframe. A meeting will be scheduled and the settlement offer communicated to the Board for review.

D. Board Not Liable for Damages

The Board shall not be responsible for any costs, damages, or expenditures to entities that receive funds from the Recipient because of termination of this Agreement with the Recipient.

IN WITNESS WHEREOF, the parties have set their hands by and through the duly authorized officers and agents.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Legal Agreement between the Kentucky Agricultural Development Board and Livingston County Board of Education was mailed via U.S. Mail, first class, postage pre-paid on this _____ day of _____, 2020, to:

Livingston County Board of Education
c/o Victor Zimmerman
PO Box 219
Smithland, KY 42081
Recipient

And the original shall be maintained on file at the Governor's Office of Agricultural Policy

GOAP Staff

 KADF KENTUCKY AGRICULTURAL DEVELOPMENT FUND	Shared-Use Equipment Reporting Summary Sheet (Semi-Annual)
* This report is for all shared-use equipment programs and is due every six (6) months following the effective date of your legal agreement, until a letter of completion is received from GOAP. Please e-mail completed report to govkvaqpolicy@ky.gov	
County: _____ ADB Application #: _____	
Administrative Entity: _____	
Reporting Contact: _____ Phone: _____	
Email Address: _____ Fax: _____	
REPORTING INFORMATION	
Type of Shared-use Equipment: _____ ONE type per report form	
Reporting Year: _____	
Reporting Period: _____ (e.g. Jan. - June)	
USAGE	
# Farmers Leasing This Period: _____ # Unit Serviced This Period: _____	
Unit Type: _____ (Acres/Livestock/Trees/Other, specify)	
FISCAL INFORMATION FOR REPORTING	
<i>Total Fees This Period</i>	
Leasing/Usage Fees Received for this period:	\$ _____
Other Fees Received this period (e.g. late fees):	\$ _____
Total Funds Collected (sum of the above two numbers):	\$ _____
ADMINISTRATIVE / MAINTENANCE	
<i>Only complete in first report - OR - if anything changes.</i>	
Insurance Policy Holder: _____	Type of Coverage: _____
Where is the equipment housed? _____	
Who schedules the equipment? _____	Maintenance & Clean-up? _____
How is the equipment advertised? _____ (Attach copy of advertisement)	
Equipment Purchase	
First 6-Month Report ONLY:	Price: _____ Serial Number: _____
Attach a copy of paid invoice and photo of equipment.	
<i>I hereby certify that the above information is true and correct.</i>	
Printed Name: _____	
Title: _____	Date: _____